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March 26, 2015

By ECF

The Honorable Denise L. Cote,
United States District Judge,
Daniel Patrick Moynihan United States Courthouse,
500 Pearl Street, Room 1610,
New York, New York 10007-1312.

Re: FHFA v. Nomura Holding America, Inc., et al., 11 Civ. 6201 (S.D.N.Y.)

Dear Judge Cote:

In response to the Court's invitation yesterday for authority that the exhibits listed on DX 4092 are inadmissible hearsay as to Nomura, we offer the following: *Realuyo v. Diaz*, 2006 WL 695683, at *5 (S.D.N.Y. Mar. 17, 2006) ("The alleged statements by Mr. Diaz may not be deemed admissions against KEPCO simply because both are named defendants in this action."); *Auscape Int'l v. Nat'l Geographic Soc.*, 409 F. Supp. 2d 235, 242 n.31 (S.D.N.Y. 2004) ("While the unsworn statement may be admissible against the National Geographic defendants as an admission under Fed. R. Evid. 801(d)(2), it is hearsay as against the ProQuest defendants."); *Mueller v. Cnty. of Westchester*, 943 F. Supp. 357, 359 n.2 (S.D.N.Y. 1996) ("Even assuming arguendo that Greer's alleged statement could be treated as an admission of his principal, Empress Ambulance, it could still not be introduced against the County of Westchester (the only defendant in the Sixth Cause of Action), with which Empress Ambulance had only a contractual relationship."), *aff'd*, 122 F.3d 1056 (2d Cir. 1997).

In addition, concerning the Court's statement that "I think [the documents listed in DX 4092] would come in for the truth with respect to Nomura in the jointly undertaken activity of the securitization of these 4 certificates" (3/25/15 Tr. at 1271:14-16), the vast majority of the documents contained in DX 4092 were not generated in connection with RBS's underwriting of four of the at-issue Securitizations. *See, e.g.*, PX 1128 (emails about Option One, an originator that did not contribute loans to the at-issue Securitizations); PX 1153 (emails about First Franklin, an originator that did not contribute loans to the at-issue Securitizations).

Respectfully submitted,

/s/ David B. Tulchin

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cc: Counsel of Record via ECF